IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 127 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

BHARWAD POPAT RUDA

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Appearance:

1. Criminal Appeal No. 127 of 1990

MR HM PRACHCHHAK, LD. APP for Appellant.

MR MAHENDRA K PATEL for Respondent.

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 26/08/2004

ORAL JUDGEMENT

The present appeal is preferred under Section 377 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the Code') praying enhancement of sentence passed by the learned Judicial Magistrate First Class, Dhrangadhra while convicting the

respondent-accused in Criminal Case No.1436/1986 vide order dated 18th December, 1989.

2. The grievance of the appellant-State is that though the Court has found the respondent-accused guilty of the offences punishable under Sections 161 and 162 of the Gujarat Panchayats Act (hereinafter referred to as 'the Act'), the adequate punishment has not been imposed. The cattle grazing, of course, is a serious offence and it causes damage to the farmers and, therefore, when the appellant-State has prayed for enhancement, the facts leading to the proceedings conducted by the trial Court shall have to be looked into. A complaint came to be registered against the respondent-accused on 25th November, 1986 alleging that the respondent-accused has deliberately placed his cattle on the standing crops of the complainant and, thereafter the respondent-accused was arrested. It is mentioned in the complaint that on 24th November, 1986, the respondent-accused allowed his cattle to trespass upon the private property/field of the complainant and thereby, committed the aforesaid offences punishable under the Act. The statement of the respondent-accused was also recorded by the Investigating Agency on 18th August, 1987. The order of conviction has not been challenged by the respondent-accused. The learned trial Judge has imposed fine of Rs.50/- i.d. to undergo S.I. for five days for the offence punishable under Section 161 of the Act; and a fine of Rs.75/- i.d. to undergo S.I. for 10 days for the offence punishable under Section 162 of the Act.

3. On careful consideration of the facts emerging from the record and the reasons assigned by the learned trial Judge, it is clear that the offence committed by the respondent-accused was the first offence and, therefore, the learned Magistrate could have imposed imprisonment upto one month or with fine which may extend to Rs.300/- or with both. So the outer limit of the fine is Rs.300/- prescribed in the statute so far as offence punishable under Section 161 of the Act is concerned. It is neither mandatory to impose substantive sentence nor any minimum period punishment is prescribed. Subsection 2 provides for second or subsequent offence where the prescribed punishment is of six months and the amount of fine, if is to be imposed, then the outer limit is of Rs.500/-. So far as offence punishable under Section 162 of the Act is concerned, it is provided that if the substantive sentence is to be imposed, then the term should not exceed six months and the fine should not exceed Rs.500/-. So considering the damage allegedly caused, number of cattle that had allegedly trespassed

the property of the complainant, the learned Magistrate has imposed fine that can be said to be minimum for the offence committed in the year 1986. He was also held guilty after trial in the year 1989. So it can be legitimately inferred that the compulsion of attending the trial for three years by itself must have been felt like punishment; especially for a person who is engaged in cattle grazing activity. After several years for the offence proved against the respondent-accused, the appellant-State normally should not asked the accused to undergo substantive punishment. The amount of fine imposed by the trial Court, if is found warranted can be increased but the value of rupee in the year 1986 if is considered, then it would be difficult for this Court to conclude that the punishment was grossly inadequate. Some additional amount of fine probably could have served the real purpose but that by itself would not confer jurisdiction to enhance the sentence unless the Court is satisfied that the sentence imposed is grossly inadequate and the victim because of the inadequacy of the sentence feels frustrated, only then the order enhancing the sentence can be passed. Some addition for the purpose of adding something in the total punishment should not be made merely because the appellant-State has agitated the grievance. The socio economic impact on the accused person is also considered relevant and from that angle the Court is of the view that the punishment imposed by the trial Court was not grossly inadequate and, therefore, no enhancement is required to be made.

For short, in absence of any justification, the present appeal is hereby dismissed. The judgment and order dated 18th December, 1989, passed by the learned Judicial Magistrate First Class, Dhrangadhra, in Criminal Case No.1436/1986 is hereby confirmed. Bail bond, if any, shall stand discharged.

( C.K. Buch, J)

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